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AMARAVATI, WEDNESDAY, OCTOBER 4, 2023

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PART II - MISCELLANEOUS NOTIFICATIONS OF INTEREST TO THE PUBLIC

--X--

**NOTIFICATIONS BY HEADS OF DEPARTMENTS Etc.,
I ADDITIONAL SENIOR CIVIL JUDGE'S COURT
GUNUR.**

Monday, the 7th day of August, 2023

INSOLVENCY PETITION NO.58/2019

Between:

Tirumalasetti Satish, S/o Adinarayana, Hindu, aged about 38 years,
R/o Dr.No.49-3-131, Seelamvari Street, Kothapet, Guntur.

...PETITIONER.

AND

1. Parchuri Naresh, S/o Koteswara Rao, Hindu, aged about 35 years, business, R/o D.No.86-4-896, 1/6 Konda Venkatapaiah Colony, Lalpuram Road, Chuttugunta, Guntur.
2. Adapa Samba Siva Rao, S/o Narasimha Rao, Hindu, aged about 38 years, business, R/o Dr.No.7-532, Tipparla Bazar, Mangalagiri village & Mandal, Guntur District.
3. Goli Sai Kumar, S/o Kanaka Mohana Rao, Hindu, aged 36 years, business, R/o Dr.No.8-419/A, Golivari Street, Mangalagiri village & Mandal, Guntur District.
4. Kinara Capital Visage Holdings & Finance Pvt. Ltd., rep. by its authorized signatory, O/o D.No.130-7, 2nd Floor, Annapurna Nagar, 3rd Line, Main Road, Gorantla, Guntur.

5. Capital First Limited rep. by its branch Manager, O/o. D.No.40/2/5A, Ground Floor, C.V.R. Chamber, M.G. Road, Kalaniketan Back side, Vijayawada.
6. Bajaj Finance Limited, rep. by its Authorized person, O/o D.No.32-9-17, 2nd floor, Madhu Mahalakshmi Chambers, Near Jammi Chettu center, Mogalarajupuram, Vijayawada.
7. HDB Financial Services Ltd., rep. by its Authorized signatory, O/o D.No.27-18-60, Congress Office Road, Raj Towers Street, United Bank of India building, Vijayawada.
8. Home Credit India Finance Pvt. Ltd., rep. by its Authorized Signatory, O/o D.No.46/15/10, Railway New Colony Road, Opp. TMC, Dondaparthi, Railway New Colony, Visakhapatnam.
9. Kreditbee, rep. by its Authorized signatory, O/o Finnovation Tech Solutions Pvt. Ltd., 3rd Floor, No.100, The Royal Tech Park, Benninganahalli, K.R.Puram, Bengaluru, Karnataka State.
10. Smart Coin, rep. by its Authorized Signatory, No.171, Embassy Heritage, 62/201, 8th Main, Malleswaram Bengaluru, Bengaluru.
11. The Official Receiver, District Court Compound, Nagarampalem, Guntur, Guntur District.

...RESPONDENTS.

This petition coming on 10-05-2023 for final hearing before me in the presence of Sri Kalluri Hari Babu, Advocate for petitioner and Sri Y. Raghavendra Rao, Advocate for Respondent Nos.6 & 9, Sri P.V.K., Advocate for respondent No.7, and R1 to R5 and R8 to R11 are remained exparte and the matter having stood over for consideration till this day, this Court made the following:-

:: ORDER ::

1. This petition is filed under Section 10 of the Provincial Insolvency Act (for brevity, "the Act") to adjudge the petitioner as insolvent.
2. Main case of petitioner, in brief, is that,
 - (i) he inherited his ancestors business in steel, copper, and aluminium utensils, which was in the name and style of Sri Venkatasai Matel Stores at Mangalagiri. To develop the business, he borrowed money from some of his creditors. But, due to a lack of knowledge and heavy competition in the business, he sustained a huge loss in the business. Finally, he closed his business.

(ii) Later, he started an automobile business in the name and style of Srinivasa Auto Mobiles, Mangalagiri, by obtaining a certificate of registration from the Labour Department, Government of A.P. For the development of business, he borrowed amounts from the respondents and others. He also invested his personal amounts. At the time of borrowing amounts, he executed blank, signed promissory notes, blank cheques, etc., as per the demand of the respondents and others. In the said business, he also sustained huge losses due to lack of knowledge and ill-fate, and finally, he closed the business.

(iii) He borrowed amounts from several people at a higher rate of interest to pay amounts to his creditors and financial institutions. Finally, he is unable to discharge it. Taking advantage of his weak financial position, respondents 1 to 10 threatened him with dire consequences to discharge their debts. Further, respondents 1 to 10 came upon the house of petitioner and demanded to pay and clear off their debts. After some time, the petitioner adjusted some of the amounts and could not answer remaining. On that, respondents 1 to 10 gradually became violent and threatened the petitioner to discharge the amounts due to them.

(iv) While so, some of the respondents also tried to kidnap the petitioner and harass him. Somehow, the petitioner escaped from their clutches. Even for the adjustment of interest also, the petitioner was compelled to take amounts from several people in Guntur city with the help of his friends and relatives. But the said amounts are not sufficient to clear the debts. All his creditors are adopting forcible and violent

methods against him to recover money. Several times, they warned the petitioner to kill him and his family members.

(v) In fact, the petitioner has no means to discharge the debts except the property mentioned in the schedule. The debts of the petitioner exceeded the properties shown in the schedule, and he is unable to discharge the debts. His family situation became worse, and he fears danger to his life in the hands of the respondents. Hence, he filed the present petition to declare him as insolvent.

3. On the other hand, respondent Nos. 6, 7, and 9 resisted the claim of the petitioner by filing separate counters. Respondents 6 to 9 filed their counters separately. They denied the petitioner's case. Though respondents 6 and 9 filed counters separately, they have taken similar defences. The main case of respondent Nos. 6 and 9 in brief, is that:

i) respondent Nos. 6 and 9 are companies registered under the provisions of the Indian Companies Act. Therefore, the present insolvency petition is not maintainable against them under Sec. 8 of the Provisional Insolvency Act.

ii) Petitioner availed of a loan from respondent Nos. 6 and 9, and subsequently, he committed default in payment of E.M.Is. However, this insolvency petition is not maintainable.

4. The main case of respondent No. 7, in brief, is that:

(i) on 30.7.2019 petitioner availed of a loan of Rs. 4,50,000/- for his family and business purposes. Later, he did not repay the loan amount. His outstanding due amount is Rs. 4,78,264/- as of 8.9.2021. The petitioner is doing metal business and getting profits but not losses.

The petitioner invested some of the respondents who were kith and kin to avoid payments to the real creditors. He purchased properties in favour of his family members, and he has the capacity to discharge the amount at a time. But he wantonly and intentionally filed this petition to evade lawful debts. There are no merits in the petition. Hence, he urged the court to dismiss the petition.

5. **Now the point for consideration is:-**

“Whether the petitioner is entitled to be adjudged an insolvent as prayed for?”

6. During the course of enquiry, the petitioner himself examined as P.W.1, and no documents were marked. On the other hand, respondents did not adduce either oral or documentary evidence.

7. Heard arguments.

8. Perused the record.

P O I N T :-

9. This petition is filed under Section 10 of the Provincial Insolvency Act. So, it is necessary to go through the prerequisites laid down under Section 10 of the Provincial Insolvency Act to enable the debtor to file the petition. The relevant portion of Section 10(1) reads as follows:

Sec.10 (1): “A debtor shall not be entitled to present an insolvency petition, unless he is unable to pay his debts.”

10. The very beginning words of Section 10(1) enunciates that inability to pay the debts is SINE QUA NON for filing an insolvency petition by the debtor.

11. Section 24 deals with ‘procedure at hearing’. The relevant portion of section 24 reads as follows :

Sec.24 (1): "On the date fixed for hearing of the petition, the court shall require proof of the following matters:

(a) The creditor or debtor, as the case may be, is entitled to present the petition.

Provided that, where the debtor is the petitioner, he shall, for the purpose of proving his inability to pay his debts, be required to furnish only such proof as to satisfy the Court that there are prima facie grounds for believing the same.

Sec.24 (2): The Court shall also examine the debtor, if he is present, as to his conduct, dealings and property in the presence of such creditors as appear at the hearing, and the creditors shall have the right to question the debtor thereon."

12. When I.P. filed by the debtor shall be dismissed as laid down under Section 25(2) of the Provincial Insolvency Act, which reads as follows:

"The Court shall dismiss the petition if it is not satisfied of his right to present the petition."

13. On a combined reading of Sections 10, 24, and 25(2), it makes abundantly clear that the petitioner/debtor is not entitled to be adjudged insolvent merely for asking it, and the Court has to verify the existence of prima facie grounds for considering the plea of the debtor to declare him insolvent.

14. At this juncture, it is relevant to go through Judgments of our own High Court. In Dasari Srihari Rao Vs Talluri Harinadha Babu¹ wherein the Hon'ble Division bench of our High Court succinctly held as follows:

"The debtor, who files an application to adjudge him as insolvent is under an obligation to satisfy the Court, by furnishing necessary information and any failure in that regard would entail in rejection of the application under Section 25 (2) of the Act."

15. In Kota Sivarama Prasad Vs. Shaik Mastan Vali and another², the Hon'ble High Court held that,

A debtor cannot be declared as insolvent, unless he establishes satisfactorily by conclusive prove that he is unable to pay debt.

16. In Chittineni Mobana Rao Vs Jagarlmudi Subbarao³, the Hon'ble High Court held that,

the proposed insolvent has only to satisfy the court as to existence of prima facie grounds which in turn must disclose that the assets held by him are not adequate to meet the liabilities.

17. In T.Chandraskharaiah Vs. D.Sreramulu Chetty and others⁴, the High Court was pleased to examine the provisions of Provincial Insolvency Act extensively, emphasizing Sections 10 and 24 of the Provincial Insolvency Act. Ultimately, it was held that,

even though the petitioner, who seeks himself to be declared as an Insolvent need not prove his case beyond reasonable doubt, but he should lead evidence and or place prima facie material before the Court, so as facilitate the Court to reach to conclusion that he is an Insolvent. He should place all such material before this court which would prima facie show that there exists grounds to believe that he is unable to discharge the debts of the respondents, and he became insolvent.

1 2002 (3) ALD 456

2 2014 (3) ALT 602

3 2010 (6) ALD 514

4 2005 (1) ALT 407

18. On the touchstone of these legal principles, this Court shall now proceed to test the case of the petitioner/debtor.

19. It is the case of petitioner that earlier, he used to do Metal business in the name and style of Sri Venkateswara Metal Stores at Mangalagiri, and to develop his business, he borrowed amounts from his creditors, but due to a lack of knowledge and heavy competition, he sustained a huge loss and consequently, closed his business. Later, he started an automobile business under the name and style of Srinivasa Automobiles in Guntur. For starting his business and developing it, he borrowed huge amounts from the respondents and others and also invested his personal amount, but due to a lack of knowledge and heavy competition, he sustained heavy losses, and now he is not in a position to clear the debts, and his debts exceed his assets, further petitioner contended.

20 On the other hand, respondents 6, 7, and 9 denied the case of petitioner, contending that petitioner did not sustain losses in the business; and that he purchased properties in the name of his kith and kin, and that he filed the present petition with intend to evade lawful debts.

21. In view of the rival contentions of both parties and the above point, the burden of proof is heavily on the petitioner. In order to prove the case, the petitioner examined himself as P.W.1. He reiterated the averments of the petition in his chief examination affidavit. Respondents cross-examined him. During cross-examination, respondents focused on three aspects: one is, on his business, the second is, on his present condition, and the third is, on his bank account details.

22. In so far as the first aspect, i.e., the petitioner's business, is concerned, PW1 testified that he used to do Metal business under the name and style of Venkateswara Metal Stores, and the percentage of profit is 5%

to 10%; and that as he sustained losses in metal business, he started automobile business, and the percentage of profit in that business is 5% to 10%. He further deposed that he did metal business for one year and automobile business for one and a half years, but he did not file account copies for metal or automobile business. Further, he deposed that he will file his PAN card, licence, and permission of business before the court, but he handed over his RC of business, licence, municipality permission, etc., to his counsel. It is relevant to note that the previous avocation of PW1 is not in dispute.

23. In so far as the second aspect is concerned, PW1 deposed that at present, he is not doing any work and is depending on the pension amount provided by his father and that there are no properties in his name.

24. In so far as the third aspect is concerned, he has a bank account at the Central Bank of Mangalagiri, and except for that, he has no other bank account, and he has a bank account statement.

25. In addition to the above, respondent Nos. 6, 7, and 9 put their defence by way of suggestions. Of course, PW1 denied the same.

26. In the entire cross-examination of PW1, respondents did not dispute the debts of petitioner shown in the petition-A schedule properties and particulars mentioned therein.

27. No doubt, the petitioner did not file any document, like a counterfoils, etc., to show the particulars of his debts. However, he furnished particulars of debts, i.e., quantum of debts, nature of debts, and details of creditors in petition A-schedule properties. Regardless of the same, respondents did not dispute the debts shown in petition A-schedule

properties. Therefore, they cannot be doubted. It is worthwhile to reproduce the debts shown in petition A-schedule properties hereunder:

Sl.No.	Name of Debtors	Nature	Amount	
			Rs.	Ps.
1.	Parchuri Naresh	Pronote & cheques	2,00,000	00
2.	Adapa Sambasiva Rao	Prontoes & cheques	3,00,000	00
3.	Goli Sai Kumar	Prontoes & cheques	1,00,000	00
4.	Kinara Capital Visage Holdings & Finance pvt. Ltd.,	Pronotes & Cheques	6,00,000	00
5.	Capital First Ltd.,	Pronotes & cheques	3,00,000	00
6.	Bajaj Finance Ltd.,	Pronotes & cheques	1,00,000	00
7.	HDB Financial Services Ltd.,	Pronotes & cheques	4,25,000	00
8.	Home Credit India Finance pvt. Ltd.,	Pronotes & Cheques	55,000	00
9.	Kreditbee	Pronotes & Cheques	1,00,000	00
10.	Smart Coin	Pronotes & cheques	1,00,000	00
	Total due amount:		22,80,000	00

28. As per the above petition A-schedule properties, the petitioner is indebted to the tune of Rs. 22,80,000/-. Now the question is whether his debts exceed his properties. Petitioner shows his immovable properties, bank securities, debtors, and cash in hand in petition B1 to B4 schedule properties as NIL, while showing his wearing apparel, i.e., 2-pants, 2-shirts, and 2-towels in petition B-5 schedule properties as worth about Rs. 500/-. As per petition B-schedule properties, he has only wearing apparel worth about Rs. 500/-.

29. It is clear from the above that petition A- schedule debts and liabilities of petitioner are greater than petition B-schedule properties. But, by making suggestions in the cross-examination of PW1, respondents strenuously contended that the petitioner did not sustain losses in the

business and that he has properties. Except for bald suggestions, the respondents did not furnish any particulars of income or profit in the business of petitioner or particulars of properties owned by the petitioner. Therefore, their contentions cannot be considered. Thus, the petitioner discharged his burden by establishing that his debts and liabilities exceeded his assets.

30. Now the onus shifts to the respondents. In order to make the court disallow the petition, Respondents 6, 7, and 9 raised five aspects: one is, no document is filed by the petitioner though he is in possession of RC of his business, permission, bank account statements, debts, etc., second is that stock is in the shop of petitioner; third is that he screened his properties by purchasing them in the names of his family members; fourth is, some more creditors are not impleaded; and fifth is that respondents Nos. 6, 7, and 9 are companies and therefore, this petition is not maintainable.

31. In so far as the first aspect, i.e., non-filing of vital documents though they are in petitioner's possession, is concerned, PW1 categorically deposed in his cross-examination that he would file a PAN card, a license and permission of business, an account statement copy, etc. For a better appreciation, the relevant portion in the evidence of PW1 is reproduced hereunder:

"I handed over RC of my business, license, municipality permission etc., to my learned counsel."

"I will file my PAN card and the above license and permission of business before this Court."

"I can file the electricity bills of my present house in the Court."

"I did not file account statement of metal and automobile business."

I can file the statement of my bank account.

32. Thus, PW1 admitted that he would file the above-stated documents, i.e., RC of his business, bank account statement copy, license, permission, etc., but he did not file the same. Of course, respondents did not issue any notice for the production of those documents. There is some meaning in drawing an adverse inference against the case of petitioner if he fails to file vital documents in spite of directions given by the court on the application of respondents. In the present case, respondents have not filed any application for cause production of those documents or petitioner is not directed to produce those documents. Unless the petitioner was called upon to produce those documents or the Court orders him to do so, no adverse inference can be drawn⁵. However, ceasing to do business of Metal and automobiles is not in dispute. Therefore, the non-filing of any permission or license of the business will not change the result of the case. Therefore, the non production of the above-stated documents does not draw any adverse inferences on the case of the petitioner.

33. In so far as the second aspect is concerned, respondents strenuously contended that there is stock in the metal shop and automobile shop of petitioner, but they have not been shown in the schedule, and thereby, he suppressed the properties, and therefore, he is not entitled to be adjudged as insolvent.

34. Admittedly, the petitioner used to do metal business for some period, and thereafter, he did automobile business. Further, he averred and deposed that he closed the business. Except that, he never averred or deposed that he is in possession of stock in metal or automobile goods. On the other hand, respondent Nos. 6, 7, and 9 also did not place any material

⁵ In Basavaraj Vs Padmavathi & Anr, two judge bench of the Hon'ble Apex Court held in Civil Appeal Nos. 8962 – 8963 of 2022 on 5th January, 2023

evidencing that petitioner possessed with the stock of his goods. In the absence of such material, the court cannot arrive at the conclusion that the petitioner is in possession of goods. Therefore, the contentions of respondents are not tenable.

35. Besides the above, respondent Nos. 6, 7, and 9 would contend that with the income of business, the petitioner purchased the properties in the names of his family members. Further, they would contend that petitioner has other properties but intentionally, he suppressed them, and therefore, this petition is liable to be dismissed.

36. Respondents Nos. 6, 7, and 9 have taken similar defence in the cross-examination of PW1. Except for that, they did not elicit particulars of those properties, such as the location of properties, in whose name they were purchased, when they were purchased, etc. Further, they did not place any material to show that the petitioner has other properties or he purchased properties in the names of his family members with his income from business. In the absence of material and particulars of properties alleged to have been purchased by the petitioner, the court cannot arrive at the conclusion that the petitioner suppressed the properties. Hence, the contentions of respondents are not tenable.

37. In addition to the above, respondent No. 6 would contend that the petitioner is indebted to some more creditors, but he has not shown them in the petition, and thereby he suppressed some of those debts. Respondent No. 6 has taken this defence in the cross examination of PW1, as stated below:

"It is not true to suggest that I have not shown all my creditors in the present I.P."

38. Except for the above bald suggestion, respondent No. 6 did not furnish particulars of those debts, i.e., name of the creditor, quantum of amount, date of debt, etc. In the absence of this material, the contentions of respondent no. 6 cannot be accepted.

39. Eventually, respondents 6, 7, and 9 strenuously contended that they are companies registered under the Indian Companies Act, and in view of Sec. 8 of the Act, an insolvency petition is not maintainable against them.

40. Respondent Nos. 6, 7, and 9 rightly contended that they are companies registered under the Indian Companies Act. The nature and status of respondent Nos. 6, 7 and 9 are not disputed by the petitioner also. Now the question before the court is whether an insolvency petition is maintainable against companies or corporations.

41. Sec. 8 of the Act would answer the above question. It deals with the exemption of corporation etc., from insolvency proceedings. It is worthwhile to reproduce the provision hereunder:

"8. Exemption of corporation, etc. from insolvency proceedings:- No insolvency petition shall be presented against any corporation or against any association or company registered under any enactment for the time being in force."

42. A plain reading of the above provision makes it manifest that an insolvency petition filed against the company is not maintainable in view of the exemption of companies/corporate from insolvency proceedings. In *Indian Overseas Bank Vs. Popuri Veeraiah and another*⁶, Hon'ble Composite High Court held at Para No.11 as follows:

11. On a bare reading of the above Section, it is quite apparent that the corporation or the associations or companies registered under any enactment in force are exempted from being proceeded

against. Therefore, it is not explained as to how and why the respondent No. 1 has included the petitioner as one of the creditors in the insolvency petition under Section 10 of the Provincial Insolvency Act, 1920. Therefore, under the scheme of the Provincial Insolvency Act, 1920, having regard to such a specific exemption given under the aforesaid provision, it cannot be said that a bank, which is a registered company can fall well within the mischief of the creditor for the purpose of the said Act. Therefore, the question of invoking the provisions of the Insolvency Act against petitioner bank does not arise nor is valid. Therefore, the very application as has been framed and filed purportedly under Section 10 of the Provincial Insolvency Act, 1920, against the petitioner is not maintainable.

43. In view of the above jurimetrical jurisprudence, the question of initiating any insolvency proceedings against companies/corporate is neither sustainable nor valid, having regard to the exemption provided under the Act. In the present case, respondents 4 to 10 are companies. In view of the above provision and authority, the present insolvency petition is not maintainable against respondent Nos. 4 to 10.

44. Though other contentions of respondent nos. 6, 7, and 9 are not tenable, in view of the 5th contention, i.e., exemption of companies and corporations from insolvency proceedings as discussed above, the present insolvency petition is not maintainable against respondent nos. 4 to 10. In so far as other private individuals are concerned, it is perfectly maintainable.

45. On thorough scrutinizing the evidence and contentions of both parties, it crystallizes that the debts and liabilities of petitioner are greater than his assets shown in B-schedule properties, even after excluding the debts of respondents 4 to 10. Thereby, the petitioner complied with the mandatory requirements of Section 10 of the Act to adjudge him as insolvent. In view of the above-mentioned facts and circumstances and the

aforesaid discussion, this court is of the opinion that the petitioner is entitled to be adjudged insolvent. Accordingly, this point is answered.

Result

46. In the result, the petition is partly allowed by adjudging the petitioner as insolvent and giving six months time to discharge, while dismissing the petition against respondents 4 to 10. All his properties are vested with the Official Receiver to deal with the same according to the provisions of the Provincial Insolvency Act, 1920. The office is directed to send a copy of this order to the District Collector, Guntur, for making Gazette notification in compliance with Section 30 of the Provincial Insolvency Act.

Dictated to the Grade-I Stenographer, transcribed by her, corrected and pronounced by me in the open court on this 7th day of August, 2023.

Y. GOPALA KRISHNA,
I Addl Senior Civil Judge,
Guntur.

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

For Petitioner:

P.W.1 : Thirumalasetti Satish

Y. GOPALA KRISHNA,
I Addl Senior Civil Judge,
Guntur.

For Respondents: None.

DOCUMENTS MARKED

For Petitioner:

-NIL-

For Respondents:

NIL.

Y. GOPALA KRISHNA,
I Addl Senior Civil Judge,
Guntur.
[Dis.No.1374.]